

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 31, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANN MARIE R.,

Plaintiff,

v.

LELAND DUDEK, ACTING
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

No. 2:24-CV-00113-JAG

ORDER GRANTING
PLAINTIFF'S MOTION
AND REMANDING
FOR ADDITIONAL
PROCEEDINGS.

BEFORE THE COURT is Plaintiff's Opening Brief and the Commissioner's Brief in response. ECF No. 7, 9. Attorney Chad Hatfield represents Ann Marie R. (Plaintiff); Special Assistant United States Attorney Erin F. Highland represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge by operation of Local Magistrate Judge Rule (LMJR) 2(b)(2) as no party returned a Declination of Consent Form to the Clerk's Office by the established deadline. *See* ECF No. 2. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion; **DENIES** Defendant's Motion; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Leland Dudek, Acting Commissioner of Social Security, is substituted as the named Defendant.

I. JURISDICTION

Plaintiff protectively filed an application for Supplemental Security Income on October 30, 2017, alleging disability since March 27, 2014.² Tr. 15, 343-48, 362. The applications were denied initially and upon reconsideration. Tr. 248-51, 255-57. Administrative Law Judge (ALJ) Jesse K. Shumway held a hearing on May 29, 2019, Tr. 120-46, and issued an unfavorable decision on June 19, 2019. Tr. 12-28. Plaintiff requested review by the Appeals Council and the Appeals Council denied the request for review on May 29, 2020. Tr. 1-6.

Plaintiff filed an action for judicial review on July 31, 2020, and in an order dated March 20, 2023, this Court remanded the case for further administrative proceedings for the ALJ to reevaluate the medical evidence, including all medical opinion evidence using the factors required by the regulations, to reassess and apply *Chavez* and AR 97-4(9), to reevaluate Plaintiff's symptom claims in the context of the whole record; and to perform the sequential analysis anew, including reconsidering Plaintiff's impairments at step-two, reassessing whether any impairments meet or equal a listing at step-three, and reperforming the step-five analysis with the assistance of vocational expert testimony. Tr. 580-98. On

² Plaintiff previously applied for Title XVI benefits on April 14, 2008; the application was denied initially and on reconsideration and resulted in an October 16, 2009, unfavorable decision from an ALJ. Tr. 147-67. Plaintiff appealed the decision and, in an order dated February 25, 2011, the Appeals Council remanded the case to the ALJ. Tr. 168-71. The ALJ denied her claim in an October 12, 2011, unfavorable decision. Tr. 172-99. Plaintiff appealed the decision to the Appeals Council and then to this Court; the appeal resulted in a judgement for the Commissioner of the Social Security Administration. *See Ann Marie R. v. Comm'r of Soc. Sec.*, No. 2:12-CV-00611-TOR (E.D. Wash. Mar. 7, 2014).

1 August 5, 2023, the Appeals Council vacated the 2019 decision and remanded the
2 case to the ALJ for further proceedings consistent with the order of the court.³
3 Tr. 602.

4 On December 7, 2023, ALJ Shumway held a remand hearing. Tr. 544-47.
5 Plaintiff did not appear, and Plaintiff's representative informed the ALJ he had
6 been unable to contact Plaintiff during the time her claim had been at district court,
7 and that she did not know of the remand order or further proceedings; the ALJ
8 found Plaintiff constructively waived her appearance at the hearing and issued a
9 decision based on the record. Tr. 519, 545-46. The ALJ issued a partially
10 favorable decision on the associated claims on January 30, 2024, finding Plaintiff
11 disabled beginning December 10, 2023, the date she turned 55. Tr. 516-42. The
12 Appeals Council did not assume jurisdiction of the case, making the ALJ's January
13 2024 decision the final decision of the Commissioner, which is appealable to the
14 district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial
15 review on April 4, 2024. ECF No. 1.

16 **II. STATEMENT OF FACTS**

17 The facts of the case are set forth in detail in the transcript of proceedings
18 and the ALJ's decision and only briefly summarized here. Plaintiff was born in
19 1968 and was 48 years old on the date the application was filed; she turned 50
20 during the period at issue, and the ALJ found her disabled as of her 55th birthday
21 on December 10, 2023. Tr. 533. Plaintiff has a 9th grade education. Tr. 363.
22

23
24
25 ³ The Appeals Council noted Plaintiff filed subsequent claim for benefits on
26 February 2, 2023, that the action with respect to the remanded claim rendered the
27 subsequent claims duplicate and ordered the ALJ to consolidate the claims and
28 evidence and issue a new decision on the consolidated claims. Tr. 602.

III. STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Sec'y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).

IV. SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four the claimant

bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show: (1) the claimant can make an adjustment to other work and (2) the claimant can perform other work that exists in significant numbers in the national economy. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If a claimant cannot make an adjustment to other work in the national economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

V. ADMINISTRATIVE DECISION

On January 30, 2024, the ALJ issued a decision finding Plaintiff was not disabled before December 10, 2023, but became disabled on that date. Tr. 519-37.

At *step one*, the ALJ found Plaintiff had not engaged in substantial gainful activity since October 30, 2017, the application date. Tr. 522.

At *step two*, the ALJ determined Plaintiff had the following severe impairments: lower back pain; hepatitis C with mild liver disease; chronic obstructive pulmonary disease; gastroesophageal reflux disease/peptic ulcer disease; abscesses; seizure disorder secondary to substance use/abuse; diverticulosis with evidence of polyps on colonoscopy; obesity; polysubstance abuse; major depressive disorder; an unspecified trauma related disorder; and personality disorder. Tr. 522.

At *step three*, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 523.

The ALJ then found Plaintiff had not submitted new and material evidence related to her RFC, and “therefore adopted the [RFC finding] from the prior ALJ

1 decision,” which was the 2011 ALJ’s finding that Plaintiff could perform light
2 work, but with the following nonexertional limitations:⁴

3 [Plaintiff] is limited to no more than occasional stooping, crouching,
4 crawling, kneeling, balancing or climbing of ramps or stairs; she should
5 never climb ladders, ropes or scaffolds; she should avoid even moderate
6 exposure to respiratory irritants or workplace hazards; she is limited to
7 understanding, remembering or carrying out simple routine, repetitive
8 tasks requiring no more than superficial contact with the public and no
9 more than occasional interaction with co-workers; her work tasks must
be able to be performed in an isolated environment; and she must be
permitted additional time to adapt to changes in routine.

10 Tr. 525; *see* Tr. 20.

11 At *step four*, the ALJ found Plaintiff had no past relevant work. Tr. 533.

12 At *step five*, the ALJ found that before December 10, 2023, “as [he] had
13 adopted the prior [RFC] from the prior [ALJ] decision,” Plaintiff “remain[ed]
14 capable of performing work,” based on the testimony of the vocational expert at
15 the 2011 hearing, and considering Plaintiff’s age, education, work experience, and
16 RFC, Plaintiff could perform jobs that existed in significant numbers in the
17
18
19

20 ⁴ In the ALJ’s 2019 decision, which was vacated based on the 2023 order of this
21 Court, the same ALJ found that the prior (2011) ALJ’s Residual Functional
22 Capacity (RFC) “accurately captures the [Plaintiff’s] functioning, as demonstrated
23 by the new evidence in the file [at that time]. No new or material evidence has
24 been submitted that would allow me to deviate from the prior ALJ’s [RFC]
25 finding.” Tr. 21. Accordingly, in 2024 the ALJ again found that there was no new
26 and material evidence related to Plaintiff’s RFC in the file since the 2011 decision
27 and adopted the RFC from the 2011 decision. Tr. 525.
28

1 national economy, including the jobs of housekeeper cleaner, laundry worker, and
2 conveyor operator. Tr. 534; *see also*, Tr. 23-24.⁵

3 The ALJ found that beginning December 10, 2023, the date Plaintiff's age
4 category changed, considering her age, education, work experience, and RFC,
5 there were no jobs that existed in the national economy that she could perform, as
6 directed by direct application of Medical-Vocational Rule 202.01, because she was
7 of advanced age, had a limited education, and had no past relevant work. Tr. 534.

8 The ALJ thus concluded Plaintiff was not under a disability within the
9 meaning of the Social Security Act at any time before December 10, 2023, but that
10 she became disabled on that date. *Id.* The ALJ found that Plaintiff's substance use
11 disorder was not a contributing factor material to the determination of disability as
12 of that date. *Id.*

13 VI. ISSUES

14 The question presented is whether substantial evidence supports the ALJ's
15 decision denying benefits prior to December 23, 2023, and, if so, whether that
16 decision is based on proper legal standards. Plaintiff raises the following issues for
17 review: (1) whether the ALJ improperly evoked the *Chavez* presumption;
18 (2) whether the ALJ properly evaluated the medical opinion evidence; (3) whether
19

20 ⁵ In the 2019 decision, the ALJ "partially adopted the prior [2011] finding," noting
21 that while Plaintiff changed age categories during the period at issue, that the
22 medical-vocational rules, used as a framework, still directed a conclusion of "not
23 disabled," and that, based on the testimony of the vocational expert at the 2011
24 hearing, and considering Plaintiff's age, education, work experience, and RFC,
25 Plaintiff could perform jobs that existed in significant numbers in the national
26 economy, including the jobs of housekeeper cleaner, laundry worker, and conveyor
27 operator. Tr. 23-24.
28

1 the ALJ conducted a proper step-two analysis; (4) whether the ALJ conducted a
2 proper step-three analysis; (5) whether the ALJ properly evaluated Plaintiff's
3 symptom complaints; and (6) whether the ALJ conducted a proper step-five
4 analysis.

5 VII. DISCUSSION

6 A. Chavez v. Bowen.

7 Plaintiff contends the ALJ improperly applied *Chavez* and AR 97-4(9). ECF
8 No. 7 at 7-8. "The principles of res judicata apply to administrative decisions,
9 although the doctrine is applied less rigidly to administrative proceedings than to
10 judicial proceedings." *Chavez v. Bowen*, 844 F.2d 691, 693 (9th Cir. 1998) (citing
11 *Lyle v. Sec'y of Health and Human Servs.*, 700 F.2d 566, 568 n.2 (9th Cir. 1983)).
12 Under the doctrine of res judicata, a prior, final determination of nondisability bars
13 relitigation of that claim through the date of the prior decision. *Lester v. Chater*,
14 81 F.3d 821, 827 (9th Cir. 1995). Furthermore, in the Ninth Circuit, a prior, final
15 determination of nondisability "create[s] a presumption that [the claimant]
16 continued to be able to work after that date." *Id.* (citation and internal quotation
17 marks omitted).⁶

18
19 "[T]he authority to apply res judicata to the period *subsequent* to a prior
20 determination [however] is much more limited." *Id.* (emphasis in original). "The
21

22 ⁶ Acquiescence Ruling (AR) 97-4(9) explains how *Chavez* differs from the Social
23 Security Administration's (SSA) interpretation of Social Security policy requiring
24 de novo review of claims for unadjudicated periods. The SSA applies the *Chavez*
25 presumption only as to claimants residing in the Ninth Circuit. AR 97-4(9),
26 available at 1997 WL 742758 at *3.
27
28

1 claimant, in order to overcome the presumption of continuing nondisability arising
2 from the first administrative law judge's findings of nondisability, must prove
3 'changed circumstances' indicating a greater disability." *Chavez*, 844 F.2d at 693
4 (citation omitted). Examples of changed circumstances include "[a]n increase in
5 the severity of the claimant's impairment," "a change in the claimant's age
6 category," and a new issue raised by the claimant, "such as the existence of an
7 impairment not considered in the previous application." *Lester*, 81 F.3d at 827-28
8 (citations omitted); *see also* Acquiescence Ruling (AR) 97-4(9), 1997 WL 742758,
9 at *3 (Dec. 3, 1997). Even where the presumption is rebutted because of changed
10 circumstances, an adjudicator must adopt certain findings which were made in a
11 final decision by an ALJ or the Appeals Council under the same title of the Act
12 "unless there is new and material evidence" related to the finding. AR 97-4(9),
13 1997 WL 742758, at *3; *see also* HALLEX 1-5-4-60, *Implementation of the*
14 *Chavez Acquiescence Ruling (Ninth Circuit)*, 1998 WL 34083439, at *4 (Dec. 28,
15 1998). Medical evaluations conducted after a prior adjudication necessarily
16 constitute new and material evidence. *Nursemant v. Astrue*, 477 F. App'x 453, 454
17 (9th Cir. 2012) citing *Stubbs–Danielson v. Astrue*, 539 F.3d 1169, 1172–73 (9th
18 Cir. 2008).

19
20 On October 12, 2011, a prior ALJ found Plaintiff was not disabled based on
21 a 2008 application for benefits. Tr. 175-93. The ALJ in 2019 found Plaintiff
22 rebutted the presumption of continuing nondisability, because "the relevant listings
23 have changed and the [Plaintiff] has alleged both worsening and additional
24 impairments." Tr. 15. Continuing the analysis, the 2019 ALJ concluded he could
25 not adopt the 2011 ALJ's findings at steps two, three, or four, because Plaintiff had
26 new mental health impairments, the agency had promulgated new rules and
27 regulations related to the evaluation of mental health impairments, and Plaintiff's
28 past work could no longer considered past relevant work. Tr. 18-19, 22-23. The

1 2019 ALJ found, however, that no new or material evidence had been submitted
2 that would allow him to deviate from the 2011 ALJ's findings at step one,
3 Plaintiff's RFC, and step five, and he adopted those 2011 findings. Tr. 15-16,
4 17-18, 21.

5 This Court remanded the case to the ALJ in March 2023 due to errors in
6 assessing the medical evidence without reaching the *Chavez* issue but instructed
7 the ALJ on remand to reperform the *Chavez* analysis. Tr. 580-98. The 2019
8 decision was vacated by the Appeals Council, which remanded the claim to the
9 ALJ with instructions to consolidate a later claim with the file and for "further
10 proceedings consistent with the order of the court." Tr. 602.

11 In 2024, the same ALJ again noted, without analysis, Plaintiff's unfavorable
12 ALJ decision *from 2011* and found that Plaintiff had rebutted the presumption of
13 nondisability due to changes in "age category, listings, etc.," but that there was "no
14 new and material evidence demonstrating a change in residual functional capacity
15 [since 2011]." Tr. 520. Medical evaluations conducted after a prior adjudication
16 necessarily constitute new and material evidence. *Stubbs-Danielson*, 539 F.3d at
17 1172-73. Here, there are multiple new medical evaluations since the 2011
18 decision, including several where providers found disabling limitations; the
19 medical evidence and evaluations from the 2011 decision are not available in the
20 current file; and multiple impairments the ALJ based Plaintiff's 2011 RFC on have
21 changed or worsened, and some from the 2011 decision are not in evidence in this
22 claim. *See, e.g.*, Tr. 409-10, 413, 415, 417-18, 435-42, 448-54, 455-63, 798-28.
23 Plaintiff also has several new physical and mental impairments, including multiple
24 mental health impairments that were not considered in the 2011 RFC; Plaintiff's
25 alleged onset date in the current claim is not until 2014, years after the 2011 ALJ
26 decision; she changed age categories two times as of the 2024 decision; and there
27 have been changes in the relevant regulations since the 2011 ALJ decision.
28

1 Accordingly, there is new and material evidence relating to the RFC and multiple
2 steps in the sequential evaluation.

3 On this record, the ALJ erred in concluding that there was no new and
4 material evidence and adopting the 2011 ALJ's RFC and other findings. Tr. 520.
5 Notably, the 2024 ALJ also repeatedly references findings from the remanded
6 2019 decision as if the findings discussed and/or adopted in the 2024 decision were
7 from a prior unfavorable decision from 2019, *see* Tr. 525, 527, 529; the 2019
8 decision was reversed and remanded by this Court, however, and subsequently
9 vacated by the Appeals Council and any findings adopted, including the RFC, most
10 of the impairments at step two, the step three analysis except for the mental health
11 listings, the step-five findings, including jobs and job numbers, are from a prior
12 unfavorable ALJ decision from 2011. Even if there were not several new
13 evaluations over the more than a decade since that decision, basing the availability
14 of jobs in 2024 on vocational expert testimony from 2011, without further
15 explanation and analysis, is simply not supported by substantial evidence.
16

17 This Court remanded the case to the ALJ in March 2023 due to errors in
18 assessing the medical opinion evidence without reaching the *Chavez* issue; the ALJ
19 was instructed, however, along with the order to reassess all medical opinions and
20 prior administrative findings using the factors as required by the regulations, to
21 reperform the *Chavez* analysis, as well as reconsider Plaintiff's symptom
22 complaints and reperform the sequential analyses including new vocational expert
23 testimony. Tr. 580-98. In 2024, the ALJ did not properly apply *Chavez*; again
24 applied much of the reasoning this Court rejected in regard to the medical opinion
25 evidence; did not assess the medical opinion evidence, including prior
26 administrative findings, using the factors required by the 2017 regulations; did not
27 reassess Plaintiff's symptom complaints for the period at issue in this claim as
28

1 ordered by this Court; and did not reperform the sequential analysis, as ordered,
2 including obtaining new vocational expert testimony at step five.

3 Accordingly, on this record, the ALJ harmfully erred in concluding there
4 was no new and material evidence relevant to the RFC, as well as steps two, three,
5 and five of the sequential analysis. Under AR 97-4(9), the ALJ must adopt certain
6 findings which were made in a final decision by an ALJ unless there is new and
7 material evidence related to the finding. The entirety of medical opinion evidence
8 in the current file consists of several medical evaluations (and review of medical
9 evidence) conducted after the 2011 ALJ decision, and this constitutes new and
10 material evidence related to the RFC and other steps of the sequential analysis.
11 The ALJ erred in finding otherwise and this error affected the rest of the decision.
12 Upon remand the ALJ will again apply *Chavez*, as Plaintiff has demonstrated
13 changed circumstances *and* there is new and material evidence; and, therefore, no
14 findings from the prior 2011 decision will be adopted.

15 Upon remand the ALJ will carefully reconsider Plaintiff's 2017 claim and
16 any consolidated claims, through the date she was determined disabled, December
17 10, 2023. This will include reperforming the sequential analysis and making new
18 findings at each step, reassessing all medical opinion evidence and prior
19 administrative findings, using the factors of supportability and consistency as
20 determined by the 2017 regulations, along with reassessing Plaintiff's symptom
21 claims and determining Plaintiff's RFC during the period at issue with the
22 assistance of physical and mental health medical expert testimony; and the ALJ
23 shall reperform the step five analysis from Plaintiff's 2017 (current) application
24 date, accounting for the updated 2014 alleged onset date, through the date Plaintiff
25 was determined disabled in 2023, with the assistance of vocational expert
26 testimony as previously ordered by this Court.
27
28

1 The ALJ will avoid using the same rationale used in the vacated 2019 and
2 2024 decisions that was rejected by this Court in the 2023 remand order and this
3 present order, as discussed *infra*.

4 **B. Plaintiff's Subjective Statements.**

5 Plaintiff contends the ALJ erred by improperly rejecting her subjective
6 complaints. ECF No. 7 at 20-21. It is the province of the ALJ to make
7 determinations regarding a claimant's subjective statements. *Andrews*, 53 F.3d at
8 1039. However, the ALJ's findings must be supported by specific, cogent reasons.
9 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant
10 produces medical evidence of an underlying medical impairment, the ALJ may not
11 discredit testimony as to the severity of an impairment merely because it is
12 unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
13 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting
14 the claimant's testimony must be "specific, clear and convincing." *Smolen*, 80
15 F.3d at 1281; *Lester*, 81 F.3d at 834. "General findings are insufficient: rather the
16 ALJ must identify what testimony is not credible and what evidence undermines
17 the claimant's complaints." *Lester* at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918
18 (9th Cir. 1993).

19 Here, the ALJ erred in finding that "a prior unfavorable administrative law
20 decision was issued on June 19, 2019" and adopting the RFC from this decision
21 "because [Plaintiff] has not submitted new and material evidence related to her
22 [RFC] and [the ALJ] therefore adopted the [RFC] from the [2019] ALJ decision."
23 Tr. 525. The ALJ then explained, based on this faulty reasoning, that "no new
24 evaluation of subordinate findings like symptom evaluation is appropriate if there
25 is no new and material evidence relating to the [RFC]." *Id.*

26 However, as discussed *supra*, the RFC in the 2019 and 2024 decisions is the
27 RFC from the 2011 final ALJ decision, *see* Tr. 520, and there is significant new
28

1 and material evidence relating to the RFC since that time. The ALJ's finding his
2 RFC was from a final decision in 2019 is a misstatement of the record, resulted in a
3 mischaracterization of the evidence, and constitutes harmful error as the ALJ failed
4 to reconsider Plaintiff's symptoms claims as of her current (2017, 2023)
5 applications and as previously ordered by this Court.

6 Upon remand the ALJ will again consider Plaintiff's symptom claims during
7 the period at issue, from her alleged onset date though the date she was determined
8 disabled. If discounting her symptom claims, the ALJ shall provide clear and
9 convincing reasons for doing so.

10 **C. Medical Opinions.**

11 Plaintiff contends the ALJ improperly evaluated the medical opinion
12 evidence. ECF No. 7 at 8-18. For claims filed on or after March 27, 2017,
13 pursuant to the applicable regulations, the ALJ does not give any specific
14 evidentiary weight to medical opinions or prior administrative medical findings.
15 20 C.F.R. § 416.920c(a). Instead, the ALJ must consider and evaluate the
16 persuasiveness of all medical opinions or prior administrative medical findings
17 from medical sources. 20 C.F.R. § 416.920c(a) and (b).

18 The factors for evaluating the persuasiveness of medical opinions and prior
19 administrative findings include supportability, consistency, the source's
20 relationship with the claimant, any specialization of the source, and other factors
21 (such as the source's familiarity with other evidence in the file or an understanding
22 of Social Security's disability program). 20 C.F.R. § 416.920c(c)(1)-(5).
23 Supportability and consistency are the most important factors, and the ALJ must
24 explain how both factors were considered. 20 C.F.R. § 416.920c(b)(2). The ALJ
25 may explain how the ALJ considered the other factors, but is not required to do so,
26 except in cases where two or more opinions are equally well-supported and
27
28

1 consistent with the record. *Id.* Supportability and consistency are explained in the
2 regulations:

3 (1) *Supportability*. The more relevant the objective medical evidence
4 and supporting explanations presented by a medical source are to
5 support his or her medical opinion(s) or prior administrative medical
6 finding(s), the more persuasive the medical opinions or prior
administrative medical finding(s) will be.

7 (2) *Consistency*. The more consistent a medical opinion(s) or prior
8 administrative medical finding(s) is with the evidence from other
9 medical sources and nonmedical sources in the claim, the more
10 persuasive the medical opinion(s) or prior administrative medical
finding(s) will be.

11 20 C.F.R. § 416.920c(c)(1)-(2).

12 The Ninth Circuit has addressed the issue of whether the regulatory
13 framework displaces the longstanding case law requiring an ALJ to provide
14 specific and legitimate reasons to reject an examining provider's opinion. *Woods*
15 *v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). The Court held that the 2017
16 regulations eliminate any hierarchy of medical opinions, and the specific and
17 legitimate standard no longer applies. *Id.* at 788-89, 792. The Court reasoned the
18 "relationship factors" remain relevant under the new regulations, and thus the ALJ
19 can still consider the length and purpose of the treatment relationship, the
20 frequency of examinations, the kinds and extent of examinations that the medical
21 source has performed or ordered from specialists, and whether the medical source
22 has examined the claimant or merely reviewed the claimant's records. *Id.* at 790,
24 792. Even under the new regulations, an ALJ must provide an explanation
25 supported by substantial evidence when rejecting an examining or treating doctor's
26 opinion as unsupported or inconsistent. *Id.* at 792.

1 **1. Dr. Genthe.**

2 On July 24, 2019, Dr. Genthe performed a psychological/psychiatric
3 evaluation on behalf of DSHS. Tr. 798-08. Dr. Genthe diagnosed Plaintiff with
4 major depressive disorder, with anxious distress; PTSD; ADHD; other specified
5 personality disorder; alcohol, heroin, and cocaine use disorder, all in sustained
6 remission; and methamphetamine use disorder, in early remission. Tr. 801. He
7 opined Plaintiff had marked limitation in her ability to adapt to changes in a
8 routine work setting, to ask simple questions or request assistance, communicate
9 and perform effectively in work setting, maintain appropriate behavior in a work
10 setting, to complete a normal workday and workweek without interruptions from
11 psychologically based symptoms, and to set realistic goals and plan independently.
12 Tr. 802. He opined that while the overall severity of her conditions was marked,
13 her limitations were not the results of a substance use disorder, but that chemical
14 dependency assessment was recommended; and that vocational training or services
15 would minimize or eliminate barriers to employment. Tr. 802-03.

16 Dr. Genthe opined that problematic personality traits, primarily those
17 associated with borderline features may limit Plaintiff's ability to function
18 appropriately in personal, social, and work settings and that "problematic
19 personality traits frequently limit treatment interventions of mental health
20 symptoms" and, that it was therefore "recommended to include the information of
21 the personality assessment [Personality Assessment Inventory (PAI) testing] in her
22 treatment." Tr. 803. Dr. Genthe opined that although Plaintiff had begun
23 treatment, her symptoms "ha[d] not improved to the point of her being able to
24 resume normal work activities"; and that she should continue treatment and a
25 psychiatric consult might be beneficial. *Id.* He opined her prognosis was poor
26 from a psychological perspective, and that she was unlikely to function adequately
27
28

1 and/or consistently in a work setting until her psychological symptoms were
2 managed more effectively. *Id.*

3 The ALJ found Dr. Genthe's opinion unpersuasive because his opinion did
4 not include or account for "in any way" a Personality Assessment Inventory (PAI)
5 testing "that showed negative impression management, such as malingering."
6 Tr. 533. This is a mischaracterization of the evidence, however, as Dr. Genthe
7 addressed the PAI testing in his opinion, explaining that Plaintiff "presented with
8 problematic personality traits, primarily those associated with borderline features"
9 and that these "may limit Plaintiff's ability to function appropriately in personal,
10 social, and work settings" and that "problematic personality traits frequently limit
11 treatment interventions of mental health symptoms" and it was therefore
12 "recommended to include the information of the personality assessment
13 [Personality Assessment Inventory (PAI) testing] in her treatment." Tr. 803. Dr.
14 Genthe explained that PAI testing was intended to provide assessment of factors
15 that could distort results of testing and "could include failure to complete test items
16 properly, carelessness, reading difficulties, confusion, exaggeration, malingering,
17 or defensiveness." Tr. 805-06. While Dr. Genthe noted Plaintiff's results showed
18 the possibility of the above factors, he also noted profiles of this type are usually
19 associated with marked distress and "severe impairment in functioning is typically
20 present." Tr. 806-08.

21 Accordingly, the ALJ's description of the PAI testing results as "show[ing]
22 negative impression management, such as malingering" is not an accurate
23 characterization of Dr. Genthe's test results, and the ALJ's finding that Dr. Genthe
24 failed to address this testing is incorrect. *Id.*; see Tr. 533. Dr. Genthe discussed
25 the testing in the narrative position of his opinion, it appears to have informed his
26 diagnosis of a personality disorder, and Dr. Genthe did not conclude such testing
27 showed malingering. Accordingly the ALJ's conclusion Dr. Genthe's opinion was
28

1 unpersuasive because he did not account for PAI testing that showed negative
2 impression management is not supported by substantial evidence.

3 The ALJ also concluded that Dr. Genthe's objective findings did not support
4 his opinion. Tr. 533. The more relevant objective evidence and supporting
5 explanations that support a medical opinion, the more persuasive the medical
6 opinion is. 20 C.F.R. § 416.920c(c)(1). Here, the ALJ noted some normal findings
7 upon mental status exam, including that Plaintiff was cooperative, friendly, and
8 well groomed. Tr. 533. Upon review of the evaluation, however, the majority of
9 Dr. Genthe's observations upon mental status exam were abnormal; Dr. Genthe
10 observed abnormal perception, memory, fund of knowledge, concentration,
11 including that Plaintiff could not spell world backwards, could not perform a
12 simple math problem, and had moderate difficulties following conversation, as
13 well as abnormal findings in abstract thought and insight and judgement, including
14 poor understanding of her illness and factors contributing to it, and poor level of
15 social maturity and willingness to respond to society appropriately. Tr. 805. The
16 ALJ failed to address most of Dr. Genthe's findings, and the ALJ's conclusion that
17 Dr. Genthe's objective findings did not support the opined severity of Plaintiff's
18 limitations is not supported by substantial evidence.

19 The ALJ also concluded that "many of the same reasons for not finding Dr.
20 Islam-Zwart's 2017 opinion persuasive apply to this opinion as well," including
21 that it was inconsistent with mental status findings in Plaintiff's (primarily
22 physical) treatment notes. Tr. 533. However, this reasoning was already found
23 insufficient in this Court's 2023 remand order, due to selective citing of the record
24 by the ALJ and failure to consider records that were consistent with the opinion.
25 See Tr. 589-91. Further, while reusing reasoning already rejected by this Court,
26 the ALJ failed to address the consistency of the mental health evaluations in the
27 current file, including the 2015, 2017, and 2020 evaluations of Dr. Islam-Zwart
28

1 and the evaluations of Dr. Genthe and Dr. Chandler. The more consistent an
2 opinion is with the evidence from other sources, the more persuasive the opinion
3 is. 20 C.F.R. § 416.920c(c)(2). On this record, the ALJ's reasons to discount the
4 opinion of Dr. Genthe are not supported by substantial evidence.

5 **2. Prior Administrative Findings.**

6 In March and June 2018, the state agency physical and mental consultants
7 reviewed the available records and assessed Plaintiff's level of functioning.
8 Tr. 206-25, 227-46. The ALJ found the opinions persuasive "to the extent that
9 they match the prior ALJ decision." Tr. 528. This is the exact same reasoning
10 provided by the ALJ in 2019, in reference to adoption of the RFC in the 2011 ALJ
11 decision. *See* Tr. 21. An ALJ is required to articulate how they considered the
12 consistency and supportability factors in determining the persuasiveness of each
13 medical opinion or prior administrative medical finding. 20 C.F.R. § 416.920a(b).

14 Accordingly, the ALJ erred as he failed to articulate his assessment of either
15 factor with respect to the prior administrative findings as required by the
16 regulations and as previously ordered by this Court.

17 **3. Other Medical Opinions.**

18 The ALJ assessed other medical opinions including opinions from Dr. Islam-
19 Zwart from evaluations in 2015, 2017, and 2020, an opinion by Dr. Chandler, and
20 opinions from physical evaluations. *See* Tr. 527-32. The ALJ, however, used
21 much of the same reasoning that was rejected in this Court's 2023 remand order,
22 and also determined that all the opinions in the current file/period at issue in this
23 claim did not constitute new and material evidence relevant to the RFC and other
24 steps of the sequential analysis. As discussed *supra*, this finding was an error.

25 Accordingly, upon remand, the ALJ shall reassess all medical opinions and
26 prior administrative medical findings with the assistance of physical and mental
27 medical expert testimony, making new findings and being mindful to set forth an
28

1 analysis of the consistency and supportability of the opinions as required by the
2 regulations. The ALJ will incorporate the opinions into the RFC or give reasons
3 supported by substantial evidence to reject them.

4 **D. Step Two, Step Three Step Five.**

5 Plaintiff also contends the ALJ erred at step two by rejecting evidence of
6 numerous additional severe impairments, erred by failing to conduct an adequate
7 analysis at step three, and failed to conduct an adequate analysis at step five. ECF
8 No. 7 at 18-22.

9 The ALJ adopted the 2011 ALJ's list of physical impairments at step two
10 and analysis of the physical listings at step three without any discussion of the
11 updated/relevant records in the current claim. Tr. 522-24. As noted *supra*, most of
12 the medical evidence from the earlier claim and 2011 decision are not available in
13 the current file, but there is updated medical and other evidence including medical
14 evaluations and opinion evidence concerning Plaintiff's impairments from her
15 current alleged onset date through the period at issue. Accordingly, upon remand,
16 the ALJ will reperform the sequential analysis, including steps two and three,
17 making new findings with the assistance of medical expert testimony.

18 The ALJ also failed to call a vocational expert, as previously ordered by this
19 Court, and adopted the 2011 vocational expert testimony concerning jobs that were
20 available in 2011, including the number of jobs, finding Plaintiff could perform
21 these jobs from her 2017 application date through the date she became disabled
22 according to the medical-vocational guidelines as of her 55th birthday in 2023. *See*
23 Tr. 534. As the claim is remanded for multiple errors including adoption of the
24 2011 RFC that the 2024 ALJ based his step five findings upon, upon remand the
25 ALJ will reperform the step five analysis for the period at issue in this claim, with
26 the assistance of vocational expert testimony.
27
28

VIII. CONCLUSION

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is not supported by substantial evidence and not free of harmful legal error. Plaintiff argues the decision should be reversed and remanded for the payment of benefits. The Court has the discretion to remand the case for additional evidence and findings or to award benefits. *Smolen*, 80 F.3d at 1292. The Court may award benefits if the record is fully developed and further administrative proceedings would serve no useful purpose. *Id.* Remand is appropriate when additional administrative proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989).

On this record, the Court finds that further proceedings are necessary for proper analysis of *Chavez* and AR 97-4(9), as Plaintiff has rebutted the presumption of continuing nondisability because of changed circumstances indicating greater disability and there is new and material evidence related to the RFC along with steps two, three, and five of the sequential analysis since the prior final (2011) ALJ decision. Therefore, the ALJ will not adopt any prior findings, and the ALJ must reconsider all medical evidence, including conflicting medical opinion evidence, as well as Plaintiff's symptom claims for the period from her alleged onset date through the date she was found disabled in 2023.

Accordingly, on remand the ALJ will explain that Plaintiff has rebutted the presumption of continuing nondisability because of changed circumstances and there is new and material evidence related to the RFC as well as steps two, three, and five of the sequential analysis. The ALJ will perform the sequential analysis anew, with the assistance of medical expert and vocational expert testimony, making new findings on each of the five steps of the sequential evaluation process, reassessing Plaintiff's symptom claims, and taking into consideration any other evidence or testimony relevant to Plaintiff's disability claim for the period at issue.

1 The ALJ shall also reevaluate the medical evidence of record with the assistance of
2 physical and mental medical expert testimony, including all medical opinion
3 evidence, making new findings and being mindful to utilize the factors required by
4 the regulations for each opinion, and to avoid rationale already rejected by this
5 Court in the 2023 and present remand order. The claim shall also be assigned to a
6 new ALJ.

7 Accordingly, **IT IS ORDERED:**

- 8 1. Plaintiff's Motion to remand, **ECF No. 7**, is **GRANTED**.
- 9 2. Defendant's Motion to affirm **ECF No. 9**, is **DENIED**.
- 10 3. The matter is **REMANDED** to the Commissioner for additional
11 proceedings consistent with this Order.
- 12 4. An application for attorney fees may be filed by separate motion.
- 13 5. The District Court Executive is directed to update the docket sheet to
14 reflect the substitution of Leland Dudek as Defendant, file this Order, and provide
15 a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for
16 Plaintiff and the file shall be **CLOSED**.

17 **IT IS SO ORDERED.**

18 DATED March 31, 2025.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE